IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 119 OF 2004.

Shri Duggan Adrian Kevin,
British National,
Presently lodged in Mapusa
Judicial Lock-up,
Mapusa, Goa. ... Applicant.

VERSUS

S T A T E.
(Through P.I. attached
to Anjuna Police Station),
Anjuna, Goa. ... Respondent.

Shri Menino Teles, Advocate for the Applicant.

Shri S.N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM: N.A. BRITTO, J.

date: 17TH JUNE, 2004.

ORAL ORDER:

The accused who is being charged and tried under Section 302 I.P.C. in Sessions Case No. 16/2004 and whose application for bail has been rejected by the learned Sessions Judge, Panaji, by his order dated 28.4.2004 has now approached this court for the grant of bail.

2. Shri Sardessai, the learned Public Prosecutor has informed that the charge against the accused has already been framed and though the witnesses have been attending the trial, the case has been adjourned at the request of the accused because the bail

application is pending before this court.

3. The case of the accused as set out in the bail application is that on 25.12.2003 at about 3.10 hrs. he was with his girlfriend Mrs. Catherine Hazel Campbell at Anjuna near Bamboo Hill Top and when they were drinking and dancing, one Italian by name Lucca Dallan tropped in and started talking to them and joined them and in the process of dancing the said Lucca Dallan put something in the beer glass of the applicant and offered the said glass for the applicant to drink and after drinking, the accused felt giddy and as such he along with his girlfriend went to their room in the guest house occupied by them. On behalf of the accused it is stated that the said Lucca Dallan followed them and after sometime, entered the room at the time when the accused was lying on the cot and was not in a proper mental condition and the said Italian taking advantage of the fact of the situation, committed theft of various articles lying in the room also a camera worth Rs.20,000/- and cash amount of Rs.30,000/- to Rs.35,000/- and in that state of mind the accused noticed his said girlfriend was being assaulted by the said Dallan and she was bleeding and he too was assaulted when he tried to intervene, thereby causing him grievous injuries on his chest and other parts of the body and after committing theft, --

the said Lucca Dallan pushed him aside and ran away from the spot by locking the door from outside so that the accused could not move. On behalf of the accused it is stated that due to shock and on account of brutal assault on himself and his girlfriend, he was mentally disturbed and he could not move out of the room as it was closed from outside and the accused was inside the room in a shaken state of mind when the police came and opened the latch from outside and took the accused to the Police Station.

4. On the other hand, the case of the prosecution as can be gathered from the statements recorded in the course of investigation, and filed along with the charge sheet is that the accused and his said girlfriend Catherine Hazel Campbell were both British Nationals and were residing in room no.3 of the Guest house owned by Mrs. Sheetal Pandurang Govekar who on 25.12.2003 at about 4.30 hrs. heard screams coming from the room and though she went near the door of the said room and said "hello, hello", none opened the door. The said Mrs. Govekar is stated to have heard the said foreigner woman crying and then went to call her son Dattaprasad and knocked at the door and the door was not opened, but the said foreigner woman continued to scream and her son then informed her husband who telephoned the police of Control Room on

Phone No.100 and in the meanwhile her son latched the door of the said room from outside and when the policemen came the door was opened and the said foreigner lady was seen lying in the said room and the accused was seen sitting on the cot.

5. The body of the said Catherine having been sent for post mortem examination, the doctor who conducted the post mortem examination found as many as 23 injuries on her body which included incised punctures on vital parts of the body such as on the throat portion, abdomen, etc. The accused was also sent for medical examination and was found with incised wound on the right little finger, another incised wound on the left upper arm and three incised wounds at a distance from each other on the left side of the chest above the left nipple. All injuries were stated to have been caused by a sharp weapon, the first two being simple in nature and regarding the third set of injuries, opinion having been reserved.

6. Although the accused has given his own version regarding the incident in the application for bail, there is none to vouch for the same since the bail application has not been signed by the accused nor any affidavit has been filed in support thereof. However, it can be seen that on the O.P.D. papers of the

accused issued by the Director of Health Services, the accused has as late as on 16.1.2004 complained that his girlfriend was killed and he was stabbed by an Italian.

7. On behalf of the accused, Shri Teles, the learned advocate of the accused, has submitted that even if the version of the accused is disbelieved, there is no prima facie case against the accused that the accused has committed an offence punishable under section 302 I.P.C. in relation to the said Catherine Hazel Campbell. Shri Teles has also submitted that the learned Sessions Judge has not at all given a finding whether there was a prima facie case against the accused for the commission of the offence punishable under section 302 I.P.C. Shri Teles has submitted that the case at hand is a case where there are no eye witnesses to the incident and in any event, the so called eye witnesses have not at all explained the injuries on the person of the accused. Shri Teles has further submitted that the case at hand is a case where there is also no motive. Shri Teles has read over the statements of the prosecution witnesses namely the owner of the said lodge where the accused was residing and those of her son and husband and has tried to point out to the inconsistencies in the said statements.

8. Shri Teles has placed reliance on the cases of **Bhagirathsingh Judeja v. State of Gujarat** (1984 Cri.L.J. 160) and **Lakshmi Singh and others v. State** of Bihar (1976 Cri.L.J. 1736). In the case of Bhagirathsingh Judeja, the Hon'ble Supreme Court has observed that if there is no prima facie case there is no question of considering other circumstances and in the case of Lakshmi Singh and others, the Hon'ble Supreme Court has stated that the omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one.

9. On the other hand, Shri Sardessai, learned P.P. has submitted that the very fact that the charge against the accused has been framed under section 302 I.P.C. shows that there is a prima facie case of the accused having committed an offence punishable under section 302 I.P.C. Shri Sardessai has further submitted that this not the stage to examine the merits or demerits of the case of the prosecution or for that matter the plea taken by the accused. Regarding the injuries of the accused, Shri Sardessai has submitted that the possibility of a scuffle

between the accused and the girlfriend of the accused could not be ruled out. Shri Sardessai has placed reliance on the case of **Puran v. Rambilas and another** (2001 Cri.L.J. 2566) wherein the Hon'ble Supreme Court has reiterated and which is otherwise well settled that at the stage of grant of bail a detailed examination of the evidence and elaborate documentation of the merits of the case has not to be undertaken. Nevertheless the Hon'ble Supreme Court has stated that giving reasons for granting bail to accused is different from discussing merits or demerits of the case. In the case of The **State v. Captain Jagjit Singh** (A.I.R. 1962 S.C., 253) the Hon'ble Supreme Court has dealt with all the considerations which are required to be considered when the court is called upon to decide the question of grant of bail, the considerations being the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations, which arise when a Court is asked to admit accused to bail in a non bailable offence.

10. Those principles appear to have been reiterated by the Hon'ble Supreme Court in the case of **Gurcharan Singh and others v. State** (A.I.R. 1978 S.C., 179) and in the case of **The State v. Jaspal Singh Gill** (A.I.R. 1984 S.C. 1503).

11. As already stated, at the stage of granting bail, this court is not required to make a detailed examination of the evidence collected by the prosecution or elaborate documentation of the merits or demerits of the case of the prosecution. It is therefore obvious that it is not permissible, at this stage, to examine in detail and see minor inconsistencies, as sought to be done by Shri Teles, in the statements of the witnesses recorded, who reached the scene on hearing the screams of the deceased and who saw the deceased lying in a pool of blood and the accused sitting beside her on the cot in the said room occupied by them in the guest house of the said Smt. Govekar. In the situation in which the said witnesses saw the scene and in that condition the witnesses reached to the conclusion that it is the accused who committed the murder of the deceased. A blade of scissors was also attached from the said room. Although there are no eye witnesses to the incident, the inference drawn by the said witnesses

that it is the accused who is the assailant of the said deceased appears to be quite probable. It was not for the prosecution witnesses to explain the injuries on the accused and since the accused and deceased were the only persons residing in the said room and there was no other person around, it would be for the accused to explain as to how he came to sustain the said injuries and in the absence of any such explanation not forthcoming from the accused it would not be wrong to infer, as suggested by Shri Sardessai, learned P.P., that there might have been a scuffle between the accused and his said girlfriend the said Catherine. Infliction of 23 injuries many of them on vital parts of the body show that the deceased was brutally assaulted which resulted into her death. As said before, the only probable inference in that situation was that it is the accused who assaulted the deceased mercilessly and inflicted those many injuries. The facts of the case clearly suggest that the accused was the assailant of the deceased and therefore the learned Sessions Judge was certainly justified in framing the charge against the accused under section 302 of I.P.C. and denying him bail as well. It is well settled principle that when a person is charged with a grave offence which invites severe punishment it is safe to presume that no amount of bail will secure the presence of the accused at the

trial. The learned Sessions Judge has also considered the fact that the accused is a foreigner and being so, there is a probability that if admitted to bail the accused might jump bail being faced with a very serious accusation.

12. Shri Teles has next urged the Court to admit the accused to bail on medical grounds. In support of the said submission, the O.P.D. case papers of the accused has been produced. The xerox copy of the said case papers shows that on 16.1.04 the accused had history of depression and the accused was advised that he should be watched by the Jailor and given lot of fluids probably because the accused has only one kidney. It is not every disease or sickness which entitles compels a person to be on bail on medical grounds. It is possible to lead a most normal life with only one kidney functioning. The accused could be treated for his depression as well as could be given fluids in the Lock-up and on this count the accused could not be entitled to be admitted to bail. Bail on medical grounds can be granted only when the sickness is such that it involves a risk or danger to the life if with that sickness he continues in jail.

13. The application for bail filed on behalf of the accused is hereby dismissed.

N.A. BRITTO, J.

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